36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 228.

IN THE SENATE OF THE UNITED STATES.

MAY 19, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill H. R. 195.]

The Committee on Private Land Claims, to whom were referred House bill No. 195 *and various reports of the surveyor general of the Territory of New Mexico, in relation to private land claims in said Territory, have the honor to report:*

That, after examination of the various claims mentioned in the letter of said surveyor general to the Commissioner of the General Land Office, dated the 12th January, 1858, they concur in the recommendation of the said officer that the said claims should be confirmed, with two exceptions, which they now proceed to notice.

The claim of John Scolly and others, being No. 9 on said list, is recommended by the surveyor general for confirmation for twenty-five square leagues. A careful examination of this claim, the evidence given in support of it, and the report of the surveyor general, have failed to satisfy your committee that said claim is valid for more than five square leagues. The grant was for "*cinco leguas cuadradas,*" which your committee interpret as meaning five square leagues, and not five leagues square; and although the claimants were put in possession of five leagues square—that is, of twenty-five square leagues—yet this was done by a local magistrate only two years before the acquisition of the territory by the United States, and does not seem even to have been brought to the notice of, or to have been approved by, the superior authorities. The claim made is under a petition which originally prayed for "*diez leguas cuadradas;*" that is, for ten square leagues, and after various proceedings was *restricted*, according to the language of the petitioners themselves, to "*cinco leguas cuadradas.*" The two expressions are identical in form, and if by "*cinco leguas cuadradas*" twenty-five sqare leagues were meant, then under the original petition the prayer for a grant of "*diez leguas cuadradas*" was a prayer for one hundred square leagues. This proposition is too extravagant for belief, and your committee therefore recommend that the confirmation of the claim of Scolly and others be restricted to five square leagues.

The second exception made by your committee is in relation to claim No. [illegible] which the surveyor general recommends in favor of Cornelio

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Vigil and Ceran St. Vrain for the full extent embraced in a survey annexed to the papers. The quantity of land embraced in this survey does not appear; but by a close examination of some of the distances shown, and a rough calculation of the others, there cannot well be less than one hundred square leagues, and possibly much more. Now, a reference to the petition and grant shows that the claimants, on the 8th December, 1843, petitioned Governor Armijo, stating that they had "examined the land embraced within the Huerfano, Piripa, and Cucharas rivers to their junction with the Arkansas and Aminas rivers, and finding sufficient fertile land for cultivation, an abundance of pasture and water, &c., they pray you to *grant to each one of us a tract of land in the above-mentioned locality*, protesting that, in the coming spring, we will commence operations which will be continued *until the colony shall be established and settled*," &c.

On the 9th December, 1843, the governor referred this petition "to the justice of the peace of the proper jurisdiction, who will *give the possession referred to by the petitioners*, as this government desires to encourage agriculture and the arts."

On the 25th December, 1843, the two claimants presented a petition to the justice of the peace, setting forth that the governor had granted them "*the public land contained in the accompanying petition*," and asking the execution of his order.

Under these petitions and orders the two claimants were placed by the justice of the peace, on the 2d January, 1844, in possession; not each "of a tract of land in the above-mentioned locality," but were jointly put in possession of the whole district of country, including the lands on both banks of three tributaries of the Napeste or Arkansas river, from their mouths nearly to their sources, and without the slightest apparent warrant in the governor's order for so exorbitant a grant.

If this demarkation of boundaries by the justice of the peace had been afterwards brought to the notice of the governor, and approved by him, a grave question would still remain as to his power to concede entire districts of country without the authorization of the provincial assembly or the Mexican Congress; but your committee find no proof in the paper of approval of this action by any officer superior to the justice of the peace, and as his power clearly could not go beyond the execution of the governor's orders, your committee cannot concur in the recommendation of the surveyor general that this grant be confirmed for the full extent claimed. It is, however, plain that these parties are entitled to have their title confirmed to some extent; and this involves the inquiry as to the true meaning of the words "a tract of land," claimed in the original petition.

Under the Mexican colonization law of 1824, and the regulations of 1828, the extreme quantity allowed to be granted by the governor to any colonist was eleven square leagues. In the absence of any other guide, your committee suggest that a restriction of the confirmation to an extent of eleven square leagues for each claimant would be the utmost they could fairly expect, and would be not only a fair but a liberal compliance with the obligation imposed on the good faith of the United States under the terms of the treaty of Guadalupe Hidalgo.

In relation to the proper location of these tracts, a difficulty would arise, resulting from the fact, ascertained by your committee, that a certain number of settlers, represented to be forty or fifty, have settled on tracts of land conceded to them by the above-mentioned grantees, in different parts of the tract set apart for them by the justice of the peace; so that, if the two tracts of eleven leagues each were located in any part of the district of country referred to, the location would necessarily exclude some of these settlers, who have gone on to the land in good faith and ought not to be disturbed. This difficulty can only be avoided by surveying the tracts of these actual settlers, wherever found within the district, and deducting their area from the area of the two eleven league tracts, leaving the remainder only of these two tracts to be located in one body. To this mode of location the claimants, who were represented before your committee by Judge Watts, as their counsel, and one of whom, Ceran St. Vrain, was present in person, have given their consent; and the committee has made, therefore, proper provision in the bill.

The second report of the surveyor general of said Territory was communicated to the Senate by the Secretary of the Interior, by letter addressed to the Vice-President, under date of 3d February, 1860, and consists of an abstract marked Exhibit A, comprehending nineteen claims, numbered from twenty to thirty-eight, both inclusive.

The bundles of papers containing the copies of the titles, the evidence, and the report of the surveyor general on each claim separately, have been examined by the committee; and they concur fully in the reports of that officer, recommending the confirmation of all said claims, except that which is numbered twenty-six, in the name of Juan B. Vigil.

The surveyor general recommends the rejection of this last-mentioned claim, and your committee concur with him in the opinion that it ought not to be confirmed; but the claimants' appeal to Congress, which ought not, in the judgment of the committee, to take the decision of the matter into its own hands, and refuse the claimants an opportunity of establishing their rights in a court of justice, if they can.

Amongst the claims embraced, however, in this second report, and recommended for confirmation, are two which cover the same tract of land, and are embraced in one number, to wit, No. 20.

To this tract the two claimants are: First. The heirs of Luis Maria Baca claim under a grant made by the provincial deputation of Durango to said Baca and *his seventeen sons* on the 29th May, 1821, which grant was ratified and confirmed on the — February, 1825, by the departmental assembly of New Mexico. This grant was in fee, and is a genuine and valid title. Second. The town of Las Begas or Las Vegas. This town claims under a grant made on the 25th March, 1835, to Juan de Dios Mase and twenty-seven others, by the territorial deputation, on a petition which represented the land to be *public land*, and the petitioners were put in possession. The land has been divided out, and several hundred families are located on it.

The surveyor general having none but ministerial duties to perform, has recommended the confirmation of both these titles, leaving to the respective claimants the right of adjusting their conflicting claims in

the courts. But Congress has other duties imposed on it, and is bound to legislate in such manner as to prevent, if possible, so disastrous a result as the plunging of an entire settlement of families into litigation, at the imminent hazard of being turned out of their homes, or made to purchase a second time, from a private owner, lands for which they paid their government a full equivalent, in the labor, risk, and exposure by which they have converted a wilderness, surrounded by hostile savages, into a civilized and thriving settlement; and this can be done with little loss or cost to the government.

The claimants under the title to Baca, also represented by Judge Watts as their counsel, have expressed a willingness to waive their older title in favor of the settlers, if allowed to enter an equivalent quantity of land elsewhere within the Territory; and your committee cannot doubt that Congress will cheerfully accept the proposal, which, indeed, would undoubtedly have been acceded to by Mexico if the Territory had remained hers, and to whose rights and duties the United States have succeeded.

The committee have therefore prepared an amendment to the House bill, by way of substitute, embracing the several provisions above referred to.